

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 02-63
Table of Allotments,)	RM-10398
FM Broadcast Stations.)	
(Walla Walla and Burbank, Washington))	
)	
)	
In re Application of)	
)	
New Northwest Broadcasters, LLC)	File No. BPH-20041008ACV
Station KUI-FM, Walla Walla, Washington)	
)	
For Construction Permit to Modify Licensed)	
Facilities (One-Step Upgrade))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: February 2, 2005

Released: February 4, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making*¹ issued at the request of Alexandra Communications² ("Petitioner"), licensee of Station KUI-FM, Channel 256C1, Walla Walla, Washington, proposing the reallocation of Channel 256C1 from Walla Walla to Burbank, Washington, and the modification of Station KUI-FM's license accordingly. On August 27, 2004, Station KUI-FM was downgraded by application from Channel 256C1 to Channel 256C2 (File No. BLH-20000214ABB).³ On October 8, 2004, New Northwest Broadcasters, LLC, the current licensee of Station KUI-FM, filed a one-step upgrade application (File No. BPH-20041008ACV) specifying Channel 256C1 at Walla Walla, Washington. Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if reallocated to Burbank. No other comments were received in this proceeding. In the interest of time and resources, we will consolidate the two requests, granting the reallocation and change of community proposal and dismissing the upgrade requested at Walla Walla as moot.

2. The proposal is filed pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License*.⁴ In support of its proposal, petitioner states that the reallocation of Channel 256C1 to Burbank would result in a preferential arrangement of allotments pursuant

¹ *Walla Walla and Burbank, Washington*, 17 FCC Rcd 5342 (MMB 2002).

² On June 22, 2004, the license of Station KUI-FM was assigned from Alexandra Communications to New Northwest Broadcasters, LLC (see File No. BALH-20040409AAT) and consummated on August 31, 2004.

³ *See* 19 FCC Rcd 17790 (2004).

⁴ 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

to the FM allotment priorities set forth in the *Revision of FM Assignment Policies and Procedure* because it would provide a first local aural transmission service.⁵ Petitioner further states that Burbank is a Census Designated Place with a 2000 U.S. Census population of 3,303 persons. Burbank has its own independent school district (Columbia Burbank School System), providing education to students in Grade K-12, and is administered by a locally elected school board. Burbank also has its own Fire District (Fire District No. 5), post office, zip code and telephone exchange. It is the home to local shops, stores, and restaurants. The residents of Burbank and surrounding areas would benefit by having a first local service and the programming of local news, entertainment, weather and other information.

3. The Commission has expressed its concern with the potential migration of stations from rural to urban areas, and we recognize that Burbank is located within the Richland-Kennewick-Pasco, Washington Urbanized Area. However, we note that Station KIJ-FM's transmitter site is located outside that Urbanized Area and its 70 dBu signal currently covers approximately 61% of the Richland-Kennewick Pasco, Washington Urbanized Area. Therefore, since Station KIJ-FM does not seek to change its transmitter site, no gain and loss area study or *Tuck* analysis are necessary.⁶ Moreover, Station KIJ-FM will continue to provide Walla Walla with city grade coverage. Walla Walla is already well-served with more than five reception services.

4. In determining whether to approve a change of community, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures, supra*. Both the reallocation of Channel 256C1 to Burbank or the retention of the channel at Walla Walla triggers priority (4), other public interest matters. However, the retention of Channel 256C1 at Walla Walla (population 29,686) would provide the community with ten local aural transmission services, whereas the reallocation of the Channel 256C1 would provide Burbank with its second local aural transmission service.⁷

5. We believe the public interest would be served by reallocating Channel 256C1 to Burbank, Washington, because it would provide the community with its second local aural transmission service, without depriving Walla Walla of its sole local service.⁸ An engineering analysis has determined that Channel 256C1 can be reallocated to Burbank in compliance with the Commission's minimum distance separation requirements at the petitioner's authorized licensed site.⁹ As requested, we will modify Station KIJ-FM's license to specify operation on Channel 256C1 at Burbank, Washington, as its new community of license. Since we are reallocating Station KIJ-FM to Burbank on Channel 256C1, we will dismiss its one-step upgrade application at Walla Walla.

6. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

⁵ 90 FCC 2d 88, 91 (1982). The FM allotment priorities are: First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

⁶ See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995); *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951); *RKO General, Inc.*, 5 FCC Rcd 3222 (1990); and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁷ On October 8, 2003, a construction permit (File No. BNP-20010315AAO) was issued to Pamplin Broadcasting (now assigned to Alexandra Communications) for an AM station (1560 kHz) at Burbank, Washington. As a result, the petitioner's proposal is no longer a first local aural service under priority (3).

⁸ Stations KGDC(AM), KIJ(AM), KTEL(AM), KWSW(FM), KWCW(FM), KRKL(FM), KNLT(FM), KXRX(FM) and KHSS(FM) would remain licensed to the community.

⁹ The coordinates for Channel 256C1 at Burbank are 45-57-22 North Latitude and 118-41-11 West Longitude.

7. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective March 21, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Walla Walla, Washington	227C1, 239C, 246C0, ¹⁰ 264C3, 265A ¹¹
Burbank, Washington	256C1

8. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), that the authorization for Station KUJ-FM at Walla Walla, Washington, IS MODIFIED to specify operation on Channel 256C1 at Burbank, Washington, subject to the following conditions:

- (a) Within 90 days of the effective date of the *Order*, the licensee of Station KUJ-FM shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F. R. Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

9. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, New Northwest Broadcasters, LLC, the licensee of Station KUJ-FM, is required to submit rulemaking fees in addition to the fees required for the application to effect the change in community of license.

¹⁰ We note that Channel 246C at Walla Walla was downgraded by application (File No. BPH-20030219ADQ) to Channel 246C0 on March 31, 2003. A license (File No. BLH-20030908ACK) was granted on October 2, 2003. Accordingly, the FM Table of Allotments should be amended to reflect Channel 246C0 in lieu of Channel 246C at Walla Walla, Washington. This action constitutes an editorial change in the FM Table of Allotments. Therefore, we find for good cause that a public notice and comment proceeding is unnecessary. See 5 U.S.C. Section 553(b)(A) and (B).

¹¹ We note that Channel 265A is erroneously listed in the FM Table of Allotments. Pursuant to a *Report and Order* in MM Docket No. 87-90, Channel 265A was modified to Channel 264C2 at Walla Walla, Washington. See 2 FCC Rcd 6280 (1987). Subsequently, pursuant to a one-step application, Channel 264C2 was downgraded to Channel 264C3 at Walla Walla. See 7 FCC Rcd 6217 (1992). Accordingly, the FM Table of Allotments should be amended to reflect that Channel 265A has been removed. This action constitutes an editorial change in the FM Table of Allotments. Therefore, we find for good cause that a public notice and comment proceeding is unnecessary. See 5 U.S.C. Section 553(b)(A) and (B).

10. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Report and Order* to the following:

New Northwest Broadcasters, LLC
15405 S.E. 37th Street, Suite 130
Bellevue, Washington 98006

11. IT IS FURTHER ORDERED That the application (File No. BPH-20041008ACV) filed by New Northwest Broadcasters, LLC, requesting a one-step upgrade from Channel 256C2 to Channel 256C1 at Walla Walla, Washington, IS DISMISSED, as moot.

12. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

13. For information concerning this proceeding, contact Sharon P. McDonald, Media Bureau 202-418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau